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SEDUCTION BY A MARRIED MAN.

Seduction as a crime was not recognized by the common law, and is a creature of statute.¹ The first statute making seduction a crime in Virginia, was enacted March 14, 1873, and provided that "Any person who shall, under promise of marriage, seduce and have illicit connection with any unmarried female of previous chaste character, shall be guilty of a felony, and upon conviction thereof shall be punished by confinement in the penitentiary not less than two, nor more than ten years,"² but did not provide against the act of a married man seducing an unmarried female of previous chaste character, when she knew that her seducer was married. This act was amended and re-enacted March 14, 1878, so as to apply to a married man, when the female seduced had notice of his marriage, and the statute has remained unchanged since.³ An indictment under this statute must be found within two years, and there can be no conviction on the testimony of the female seduced, unsupported by other evidence.⁴

The seduction statute creates two distinct offenses. First: The seduction and illicit intercourse with a female of previous chaste character, by *any person*, under the *promise of marriage*; and second: the seduction of an unmarried female of previous chaste character by a *married man*.⁵ The construction of this statute, as to the first offense, has been passed upon in several cases by the Supreme Court of

¹ Seduction was not punished at common law. *Anderson's Case*, 5 Rand. 627; Desty's Cr. L., sec. 135 b. But a conspiracy to seduce was recognized as a crime at common law. 3 Russ. on Crimes, 130; *Anderson's Case*, *supra*.

² Acts 1872-3, p. 178; Va. Code, 1873, p. 1190, sec. 16.

³ Acts 1877-8, p. 283. "If any person under promise of marriage seduce and have illicit connection with any unmarried female of previous chaste character, or if any married man seduce and have illicit connection with any unmarried female of previous chaste character, he shall be guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the penitentiary not less than two, nor more than ten years." Code of Va., sec. 3677.

⁴ Code of Va., sec. 3679.

⁵ Code of Va., sec. 3677.

Virginia,¹ but as to the second offense, no case involving it has ever been decided in this State.

To constitute the crime that we are considering, a married man must "seduce AND have illicit intercourse" with an unmarried female of previous chaste character.² The necessary elements of this crime are: (1). The seducer must be a married man. (2). The female seduced must be unmarried. (3). She must be of previous chaste character. (4). She must consent to the illicit connection. (5). There must be illicit connection. (6). She must have been seduced.³ Each one of these elements must be established beyond a reasonable doubt to warrant a conviction,⁴ but, in behalf of the commonwealth, the previous chaste character of the female is presumed, and it does not, therefore, devolve upon the commonwealth, under the decisions in this State, to introduce evidence to show that element.⁵ It is believed that the evidence of the female, alone, is not sufficient to prove and establish any one of the elements, except her chaste character, which is presumed.⁶ She must be corroborated on every material point, not presumed, by other evidence not emanating from her lips.⁷ The reason of this rule is, that it is presumed that the testimony of the prosecutrix will be colored as far as possible to screen herself;⁸ and it has been held that a strained construction should never be put upon her language in order to sustain a verdict of guilty.⁹

1. *The seducer must be a married man.*

The amendment of 1878, extending the statute so as to make it applicable to a married man who seduces a pure girl, not under a promise

¹ *Hausenfluck's Case*, 85 Va. 702; *Barker's Case*, 90 Va. 820; *Mills' Case*, 93 Va. 815. No case has yet been decided holding that a married man is liable when he seduces a female of previous chaste character *under promise of marriage*, but it is clear from the language of the statute that he is so liable provided the female did not have notice of his marriage at the time of the seduction and connection. The provision in the statute of 1873, and the provision in the present statute, "If any person seduce," etc., applies alike to a single or married man, provided the female did not have notice of her seducer's marriage; but if she had such notice, it would bar a prosecution under the statute. *Wood v. State*, 15 Am. Rep. 664 (48 Ga. 192); note, 87 Am. Dec. 409.

² Va. Code, sec. 3677; *Territory v. Lopez*, 2 Pac. Rep. 368.

³ *Zubriskie v. State* (N. J.), 39 Am. Rep. 611.

⁴ *Territory v. Lopez*, 2 Pac. Rep. 368; *Black v. State*, 1 Tex. App. 368; *Kaufman v. State*, 49 Ind. 251; *Binns v. State*, 46 Ind. 311; *Bradshaw v. State*, 17 Neb. 147 (5 Am. Rep. 499).

⁵ *Barker's Case*, 90 Va. 820; *Mills' Case*, 93 Va. 815.

⁶ Va. Code, sec. 3679; *Mills' Case*, 93 Va. 817; *Zubriskie v. State* (N. J.), 39 Am. Rep. 611.

⁷ *Mills' Case*, 93 Va. 817.

⁸ 21 Am. & E. Ency. L. 1046.

⁹ *State v. Haven*, 43 Iowa, 181.

of marriage, was doubtless intended to prevent men from taking advantage of their trust, where they have the care of innocent girls.

Where the female has notice of the marriage of the man, it does not seem probable that he could be convicted of seducing her under our statute, unless he stood towards her in the relation of trust and confidence, as, for instance, where he was her guardian, next kinsman, teacher or spiritual adviser, and where she trusted and confided in him.¹ The marriage of a man itself is a warning to an unmarried female to beware,² and it is hardly possible to conceive that a woman of chaste character would entertain his advances and submit her person to him, except where the relation of trust and confidence exists.

It is not presumed that a man is married,³ and on the trial of a case for seduction, where there is no promise of marriage relied upon and proven, there can be no conviction, whatever may have been the wickedness of the seducer, unless it is established by the evidence that he is a married man.⁴

If the accused is single, then he cannot be convicted under the statute, unless it is established that the female was seduced by him under a promise of marriage, and a married man may also be convicted under the statute for seducing an unmarried female of previous chaste character (under a promise of marriage) if the female did not have notice of his marriage; but where seduction is charged against a man, not under the promise of marriage, he cannot be convicted under the statute, unless it is established by the evidence that he is a married man; and, if this is not established by the evidence, the case must fail.

2. *The female must be unmarried.*

If the seduced female is married, there is no crime committed under the statute, as it does not apply where a female is married. The statute was intended only to protect the chaste and artless unmarried female from the arts and wiles of the seducer.⁵

Where there is no evidence that the female was unmarried at the

¹ *Wood v. State* (Ga.), 15 Am. Rep. 667; *Ferguson v. State* (Miss.), 42 Am. St. Rep. 492; note, 87 Am. Dec. 409, and authorities cited.

² *Wood v. State* (Ga.), 15 Am. Rep. 667; note to *Weaver v. Bachert* (Pa.), 44 Am. Dec. 164; *State v. Adams* (Ore.), 42 Am. St. Rep. 791.

³ *Patterson v. Hayden* (Ore.), 11 Am. St. Rep. 827.

⁴ Where a married man is indicted for seducing an unmarried female of previous chaste character, the marriage of the man is a material element of the crime and must be proven where there was no promise of marriage.

⁵ *Mills' Case*, 93 Va. 817.

time of the alleged seduction there can be no conviction. The unmarried state of the female is an essential element of the crime.¹

Married women are not included in the statute, because it is presumed that a man will not make advances towards a married woman, unless some inducement, by word, look or act is first offered on her part, and it is presumed that the arts and blandishments of the seducer, based upon professions of attachment, would not deceive or overcome a married woman and cause her to consent to submit her person to the seducer's lust. A married woman is better skilled against the arts of the seducer than the ingenuous, simple-minded girl, and she cannot so reasonably be treated as the victim of the villain.²

3. *The female must be of previous chaste character.*

What chaste character is, as contemplated by the seduction statute, has not been passed upon or defined by our Supreme Court, but, according to the decisions of other States, it means actual, personal purity at the time of the seduction.³ It is necessary that the female at the time that she was seduced was pursuing the path of rectitude and virtue.⁴ It seems, however, not necessary that she should have always pursued this path.⁵ She may have been defiled and impure at one time, but if she has reformed and is leading a virtuous and pure life, at the time of the alleged seduction, she is entitled to the protection of the statute.⁶

¹ Note, 87 Am. Dec. 409; *People v. Amsick*, 93 Cal. 74; *State v. Wheeler*, 108 Mo. 658.

² *Wood v. State (Ga.)*, 15 Am. Rep. 667.

³ 2 Wharton's Crim. Law, sec. 1757; *State v. Gates*, 27 Minn. 52; *State v. Stogdell*, 13 Ind. 565; Bishop on Stat. Crimes, sec. 639; Desty's Crim. Law, sec. 135 b; *Andre v. State*, 5 Iowa, 389 (68 Am. Dec. 708); *State v. Shean*, 32 Iowa, 88, 92; *State v. Brassfield*, 81 Mo. 158 (51 Am. Rep. 235); *Kenyon v. People*, 26 N. Y. 203, 254 (84 Am. Dec. 177); *Cook v. People*, 2 Thomp. & C. 404, 406; *Crozier v. People*, 1 Park. Cr. 453; and see *Carpenter v. People*, 8 Barb. 603; *Kauffman v. People*, 11 Hun. 82; *Polk v. State*, 40 Ark. 482 (48 Am. Rep. 17).

⁴ *People v. Clark*, 33 Mich. 112; *State v. Patterson*, 88 Mo. 88 (57 Am. Rep. 376); *State v. Gates*, 27 Minn. 52.

⁵ Bish. Stat. Cr., sec. 339; *People v. Clark*, 33 Mich. 112; *Carpenter v. People*, 8 Barb. 603; *Crozier v. People*, 1 Parker C. C. 453; *Kenyon v. People*, 26 N. Y. 203; *State v. Carron*, 18 Iowa, 372, 375; *Andre v. State*, 5 Iowa, 389; *Boak v. State*, 29 Ohio State, 542, 545; *State v. Dunn*, 53 Iowa, 526. See *Safford v. People*, 1 Parker C. C. 474.

⁶ Mr. Wharton in his Criminal Law, sec. 1757, says: "If, since prior acts of unchastity, she has reformed, she regains the protection of the statute. For it would be inhuman and perilous to assume that women, once fallen, but reformed, are to be afterwards exposed, without redress, to a seducer's arts. The policy of the law in such cases is to reclaim and guard." *Carpenter v. People*, 8 Barb. 603; *Kenyon v. People*, 26 N. Y. 203; *Boyce v. People*, 55 Ib. 644; *Com. v. McCarty*, 4 Pa. L. J. 136, 2 Clark (Pa.), 351; *Boak v. State*, 5 Iowa, 430; *State v. Carron*, 18 Ib. 372; *State v. Sutherland*, 30 Ib. 526; *State v. Timmins*, 4 Minn. 325; *People v. Millspaugh*, 11 Mich. 278; *Wilson v. State*, 73 Ala. 618; *Wood v. State*, 48 Ga. 192, 290 (15 Am. Rep. 667); *State v.*

It is not necessary to prove that the woman has been guilty of previous sexual intercourse in order to establish that she is not of chaste character.¹ It is sufficient to show that she has been guilty of obscenity of language, indecency of conduct and undue familiarity with men.² A woman is not a virtuous woman whose heart is already lascivious, whose mind is corrupted and defiled by lustful desires and unchaste wishes.³ If she has been already inspired with lewd thoughts, or is by nature so sensual or impure as to only await an opportunity to gratify lustful desires—"casta quia nemo rogavit"—and embraces the first opportunity afforded, she has not been seduced, because she was not led astray by any arts or wiles, but has consented to the act to gratify her own lustful passion.⁴

According to the decisions in the States, the previous chaste character of the female is presumed, and the commonwealth can rely upon this presumption.⁵ This presumption, however, can be overcome by

Dunn, 53 Iowa, 526, 527; *People v. Clark*, 33 Mich. 112, 118 (1 Am. Crim. Rep. 660); *State v. Brassfield*, 81 Mo. 151, 161; *People v. Squires*, 49 Mich. 487. "It is for the jury to determine whether or not, under the facts shown, the woman is of chaste character." *Desty's Cr. Law*, sec. 135 b. *Andre v. State*, 5 Iowa, 389 (68 Am. Dec. 708, 711); *Mann v. State*, 34 Ga. 1, 5. A reasonable doubt as to her chastity is held fatal to a conviction. *Wilson v. State*, 73 Ala. 527.

¹ *Wood v. State* (Ga.), 15 Am. Rep. 667.

² *Ib.* It is not necessary to prove that a woman has been guilty of previous sexual intercourse in order to establish that she is not of chaste character, for it is sufficient to show that she has been guilty of obscenity of language, indecency of conduct and undue familiarity with men. *Andre v. State*, 5 Iowa, 389 (68 Am. Dec. 708); *Boak v. State*, 5 Iowa, 430; *State v. Sutherland*, 30 *Ib.* 570, 572.

³ *Wood v. State* (Ga.), 15 Am. Rep. 667; *State v. Bell*, 49 Iowa, 440.

⁴ *People v. Clark*, 33 Mich. 112; *Com. v. McCarty*, 2 Clark, 135; *Wood v. State* (Ga.), 15 Am. Rep. 664; *Mann v. State*, 34 Ga. 1.

⁵ Chaste character will be presumed, and the burden is on the defendant to impeach it, notwithstanding the presumption of innocence in his favor. *Wilson v. State*, 73 Ala. 527; *Polk v. State*, 40 Ark. 482; *Wood v. State*, 48 Ga. 192, 287, 299 (15 Am. Rep. 667); *Andre v. State*, 5 Iowa, 389 (68 Am. Dec. 708); *State v. Sutherland*, 30 Iowa, 570; *State v. Shean*, 32 *Ib.* 88, 91; *State v. Higdon*, 32 *Ib.* 282; *State v. Curran*, 51 *Ib.* 112 (Am. Crim. Rep. 405); *People v. Brewer*, 27 Mich. 134 (2 Green's Crim. Rep. 562); *People v. Clark*, 33 Mich. 112, 118 (1 Am. Crim. Rep. 660); *Crozier v. People*, 1 Park. Cr. 453; *State v. McClintic*, 73 Iowa, 663. It will be found, however, upon a careful examination of these decisions holding that the chastity of the female is presumed, that they are based on statutes that do not make the chastity of the female a necessary element of the crime of seduction, except in Iowa and Virginia. All of the decisions, so far as we have been able to ascertain, except the Iowa and Virginia decisions, that are based upon statutes making the chastity of the female an essential element, hold that the chastity of the female is not presumed. See *Dunlop v. United States*, 165 U. S. 486; *Oliver's Case*, 101 Pa. 215 (47 Am. Rep. 704); *State v. Lockerby*, 50 Minn. 363 (36 Am. St. Rep. 356); *State v. Eckler*, 106 Mo. 585 (27 Am. St. Rep. 372); *People v. Roderigas*, 49 Cal. 9; *Whittaker's Case*, 131 Mass. 221; *West v. State*, 1 Wis. 209; *Zabriskie v. State*, 43 N. J. Law, 640 (39 Am. Rep. 610). See well-considered note in 3 Va. Law Reg., p. 160; *Kauffman v. People*, 11 Hun. 82.

In all criminal cases the innocence of the accused is presumed, and this presumption of innocence goes with him through the entire case and applies to every stage

showing a single previous act of illicit connection;¹ the general reputation of character following the analogy of rape;² or lewd, or wanton acts, coarse language, indecency of conduct and undue familiarity with men.³

4. *The female must consent to the connection.*

The consent of the female is part of the case of the prosecution,⁴ and is an essential element of the crime of seduction. Without her consent the crime of seduction cannot be committed; but her consent must not be for a price or merely to gratify mutual passion. Connection without the consent of the female would be rape,⁵ and voluntary and unconditional connection for the mere gratification of mutual passions, or in consideration of a price, would simply be fornication or adultery.⁶ Her consent must be brought about by the seduction—by arts, blandishments and persuasions based upon pretensions of affection. The consideration of the consent must have been the seduction, without which the consent could not have been obtained. The consent must be,

thereof, and in a case of seduction where the chastity of the female is an essential element of the crime, as it is under the statute in Virginia, there is a conflict of presumptions, if the decisions are correct that hold that the chastity of the female is presumed. Bishop Stat. Crimes, sec. 648; *State v. West*, 1 Wis. 209; *Stafford v. People*, 1 Parker, C. C. 474.

Mr. Bishop in his work on Statutory Crimes, sec. 648, says: "Some courts deem the presumption of her chastity sufficient to establish it until evidence appears to the contrary. Others hold that since also the defendant is presumed to be innocent and so the two presumptions are in conflict, some evidence of her chastity must be brought forward in the first instance. This conclusion seems better to accord with the legal analogies and reasons than the other."

Justice Van Sickel, said in delivering the opinion of the Supreme Court of New Jersey, in referring to this doctrine: "Such presumption (of chastity) it is manifest, would destroy the presumption of innocence, which is ever present as a protection to the accused, and substitute for it the presumption of guilt. A woman who comes into court with a bastard child in her arms, is not a representative of her sex; happily she represents a very insignificant portion of it. The fact that she has sacrificed that virtue which was her glittering crown casts such a shadow upon her, that in the most charitable view of the case, it should be left without presumption either way, to be determined by competent evidence what her prior repute has been." *Zabriskie v. State* (N. J.), 39 Am. Rep. 613.

¹ *People v. McArdle*, 5 Parker Cr., 180; *State v. Shean*, 32 Iowa, 88; *State v. Bell*, 49 Ib. 440; *Kenyon v. People*, 26 N. Y. 203 (84 Am. Dec. 177); *Crozier v. People*, 1 Park. Cr. 453; *People v. McArdle*, 5 Ib. 180; *Polk v. State*, 40 Ark. 482 (48 Am. Rep. 17); *People v. Clark*, 33 Mich. 112 (1 Am. Crim. Rep. 660); and see *People v. Brewer*, 27 Mich. 134 (2 Green's Cr. Rep. 562).

² Whart. Cr. Law, sec. 1757; *Bowers v. State*, 29 Ohio, 542; *Stafford v. People*, 1 Park. Cr. (N. Y.), 474; and *State v. Clark*, 9 Ore. 466; Contra, *Kenyon v. People* (N. Y.), 84 Am. Dec. 177; *State v. Prizer* (Iowa), 31 Am. Rep. 155.

³ See note 1, *supra*; *Andre v. State* (Iowa), 68 Am. Dec. 708; *Boak v. State*, 5 Iowa, 403; *State v. Sutherland*, 30 Ib. 570; *Wood v. State* (Ga.), 15 Am. Rep. 667.

⁴ Whart. Cr. Law, sec. 1759.

⁵ Whart. Cr. Law, sec. 556.

⁶ *People v. Clark*, 33 Mich. 112; *State v. Patterson* (Mo.), 57 Am. Rep. 376.

not a prompt, unconditional acquiescence, but a surrender based on, and induced solely by, the arts and persuasions of the seducer.¹ It is, we believe, as necessary for the prosecution to show such consent of the female in a case under the seduction statute as it is to establish force and non-consent in a case of rape.

5. *The illicit connection.*

The connection is the result of the seduction. It is the accomplished purpose of the seducer and perfects and completes the crime.² If the connection was induced by some other cause than the arts and wiles of the seducer, the crime of seduction has not been committed.³ If the connection was the result of force, it is rape;⁴ or if the result of mutual passion and to gratify mutual desires, it is fornication on the part of the female and adultery on the part of the man,⁵ but is in neither case seduction. This statute was not enacted to punish rape or illicit connection—they are distinct offenses and not embraced by the statute. The sole object of the statute was to punish the seducer who, by his arts and persuasions, based upon pretensions of affection, prevails over the chastity of an unmarried female, and draws her aside from the path of duty and rectitude which she was pursuing, and in this way induces her to submit her person to his lecherous embraces.⁶

6. *The seduction.*

The seduction is the gist of this crime.⁷ It is the gravamen of the offense. It is the seduction that renders the crime heinous in the eye of the law. It is the leading of a virtuous woman away from the path of purity and duty that makes the gravity of this offense, and renders it more heinous than fornication and adultery.⁸ Seduction, in a general way, has a variety of meanings according to the subject to which it is applied, but when used with reference to a man towards a female, it has a precise and definite signification, and is universally understood to mean an enticement on the part of the man by means of

¹ *Marshall v. Taylor* (Cal.), 35 Am. St. Rep. 149; *Carney v. State*, 79 Ala. 14; *Cunningham v. State*, 73 Id. 51.

² See authorities cited in note 1, *supra*; *State v. Pierce*, 27 Conn. 319; *Dinkey v. Com.* (Pa.), 55 Am. Dec. 542; *State v. Fitzgerald*, 63 Iowa, 268; *People v. DeFore*, 64 Mich. 693.

³ *State v. Adams* (Ore.), 42 Am. St. Rep. 791.

⁴ See note 5, p. 210.

⁵ See note 6, p. 210.

⁶ *People v. Clark*, 33 Mich. 112; *State v. Patterson* (Mo.), 57 Am. Rep. 377.

⁷ *People v. DeFore*, 64 Mich. 693; *State v. Adams* (Ore.), 42 Am. St. Rep. 790; *State v. Patterson* (Mo.), 57 Am. Rep. 376.

⁸ *State v. Patterson* (Mo.), 57 Am. Rep. 376.

arts, influences, promises or deception, based on pretensions of affection, to surrender her chastity.¹ The Supreme Court of California, in the well-considered case of *Marshall v. Taylor*, decided in March, 1893, gives the following definition of seduction:

"The word 'seduction' when applied to the conduct of a man towards a female, means the use of some influence, promise, art or means on his part, by which he induces the woman to surrender her chastity and her virtue to his embraces. There must be something more than mere reluctance on the part of the woman to commit the act, and her consent must be obtained by flattery, false promises, artifices, urgent importunity, based upon professions of attachment, or the like, for the woman, and that relying solely on such promises or professions of flattery or artifice or importunity, she surrendered her person and chastity to her alleged seducer. And that relying and being influenced solely by such promises, flattery, artifice and urgent importunity, she then being chaste, surrendered her person and chastity to her alleged seducer."

This definition appears to be a fair one, and is sustained by the authorities.²

The female must not be induced and influenced by the offer of money, or a price, to have illicit connection. This would not be seduction. If it were, then the common prostitute who is willing to sell her person to any man, might afterwards make the act seduction, by proving that she yielded in reliance upon the promise of compensation made her by the man, without which she would not have submitted to his embraces.³ The consideration which draws the female aside from the path of virtue, must, in some way or other, be an appeal to her affections, and the artifices and wiles used must be to gain her confidence and win her heart. Without this it is believed there can be no seduction under the statute.⁴ Artifices based upon pretensions of affection or the like, it seems, are essentially requisite,

¹ Seduction, as generally understood, is the use of some influence, artifice, promise or deception, with persuasion, based on pretensions of affection, by a man whereby he induces an unmarried woman of previous chaste character to have illicit connection with him. *State v. Pierce*, 27 Conn. 319; *Croghan v. State*, 22 Wis. 444; *People v. Clark*, 33 Mich. 112; *State v. Fitzgerald*, 63 Iowa, 268; *People v. Royal*, 53 Cal. 62. A conviction cannot be sustained where the evidence fails to show any artifice, promise or deception used by the accused. *State v. Crawford*, 34 Iowa, 44; *Smith v. Milburn*, 17 Iowa, 30; *Delvee v. Boardman*, 20 *Ib.* 446; *Brown v. Kingsley*, 38 *Ib.* 220; *People v. Clark*, 34 Mich. 112.

² *State v. Pierce*, 27 Conn. 319; *Croghan v. State*, 22 Wis. 444; *Brown v. Kingsley*, 38 Iowa, 220.

³ *People v. Clark*, 33 Mich. 112; *State v. Patterson* (Mo.), 52 Am. Rep. 376.

⁴ *People v. DeFore* (Mich.), 8 Am. St. Rep. 868; *Carney v. State*, 79 Ala. 14; *Cunningham v. State*, 73 *Ib.* 51. To sustain the charge of seduction it must be shown that the connection was accomplished by some artifice or deception, based on pretensions of affection. *Baird v. Bohne*, 72 Iowa, 318; *State v. Fitzgerald*, 63 *Ib.* 268.

without which there can be no seduction.¹ Not only is this true, but the illicit connection, essential to complete and perfect the crime under the statute, must have resulted from and have been the actual consequence of the artifices based upon the pretensions of affection, and not the result and consequence of some other cause.² If this is not true, the virtue and chastity of the female can be bought at a price, as from a common prostitute.³

A female of chaste character does not entertain feelings of lust. She repels the very thought of impurity. There is no way to poison her mind and dethrone her virtue except through her affections. To do this, the seducer pays her delicate attentions and makes her feel courted; he praises and flatters her and pours into her ears pretensions of love; he gains her confidence and then her heart; then follows lustful toyings and sensual embraces; he draws her away from pure and chaste thoughts; she forsakes the path of purity and duty and becomes the victim of lust and passion; and relying upon and trusting him, she consents to his lecherous embraces and submits her body to his lust, and the crime is committed.⁴

A mere artifice by which a man induces a chaste unmarried female to have connection with him is not seduction, for that would be either rape or illicit connection. If the artifice was such as to deprive the female of the free exercise of will, or was used when she could not

¹ "There must be reluctance to commit the act on the woman's part, and her consent must be obtained by flattery, false promises, artifice, urgent importunity, based on professions of attachment or the like; otherwise there is no seduction in any proper sense of the word. It is at least certain that unless consent to unlawful sexual intercourse is induced by some of the means just indicated, no indictment will lie under a statute making seduction a crime, nor can the woman seduced maintain any action for the alleged seduction." *Smith v. Milburn*, 17 Iowa, 30; *Delvee v. Boardman*, 20 Ib. 446; *Brown v. Kingsley*, 38 Ib. 220; *State v. Crawford*, 34 Ib. 40; *People v. Clark*, 33 Mich. 112.

"No one can with any degree of plausibility contend that a virtuous female could be seduced without any of those arts, wiles, and blandishments so necessary to win the heart of the weaker sex." *State v. Reeves* (Mo.), 10 Am. St. Rep. 349; 2 Va. Law Reg. 679.

² "The promise of marriage, arts or deceptions, as the case may be, must sustain the relation to the accomplished purpose as cause to effect, or the case is not brought within the statute." Note to *People v. DeFore*, 8 Am. St. Rep. 870; *Carney v. State*, 79 Ala. 14; *Cunningham v. State*, 73 Ib. 51; *Putnam v. State* (Tex.), 25 Am. St. Rep. 738; *State v. Hori*, 100 N. C. 443 (6 Am. St. Rep. 613, and note); *Callahan v. State*, 68 Ind. 198 (30 Am. Rep. 211); *Kenyon v. People*, 26 N. Y. 203 (84 Am. Dec. 177, and note); *State v. Primm*, 98 Mo. 368; *State v. Abrisch*, 41 Minn. 41; *Patterson v. Hayden* (Ore.), 11 Am. St. Rep. 827; *State v. Patterson* (Mo.), 57 Am. Rep. 374.

³ *State v. Patterson* (Mo.), 57 Am. Rep. 376, and authorities there cited.

⁴ *State v. Patterson* (Mo.), 57 Am. Rep. 377.

exercise her will, it would be rape;¹ and if the artifice was with reference to a consideration, in the nature of a price, it would be illicit connection and no more.² There can, we believe, be no seduction unless the artifice used by the man to bring about the connection, is based upon pretensions of affection or the like.³ A woman cannot be seduced except through an appeal, in some way, to her affections. If her passions are first stirred up and she is induced to have connection by mere appeal to her passion, it is not seduction.⁴ The sin of the seducer consists in gaining and then polluting the affections of a chaste unmarried woman, and in this way leading her to ruin.

There must also be more than mere reluctance on the part of the female.⁵ Her confidence and affections must be gained by the artifices of the seducer, and she must be induced to submit to the connection by persuasion, and, in submitting to him, her confidence must be betrayed—she must be deceived.⁶ If she already has lustful thoughts and inspires such thoughts herself by word, look or act, she cannot be seduced, for she has already strayed from the path of purity and duty; she is impure, and is beyond the poisoning influence of the seducer.⁷

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¹ If the intercourse be accomplished by force, or without the consent of the woman, the crime is plainly not seduction, but rape. Note to *State v. Carron*, 87 Am. Dec. 405; *State v. Kingsley*, 39 Iowa, 439; *State v. Lewis* (Iowa), 30 Am. Rep. 407; Whart. Cr. L., sec. 556, and authorities cited.

² *Safford v. People*, 1 Park. Cr. 479; *People v. Clark*, 33 Mich. 112; *State v. Fitzgerald*, 63 Iowa, 258; *State v. Patterson* (Mo.), 57 Am. Rep. 376.

³ See authorities cited in note 1, p. 213.

⁴ *Baird v. Boehner*, 72 Iowa, 318; *State v. Fitzgerald*, 63 *Ib.* 268; *Hawn v. Banghart*, Sup. Ct. Iowa, 1888; note to *People v. DeFore*, 8 Am. St. Rep. 870. "If without being deceived, and without any false promises, deceit or artifice, she voluntarily submits to the connection, there can be no conviction." *Brown v. Kingsley*, 38 Iowa, 220; *Smith v. Milburn*, 17 *Ib.* 30; *Egan v. Murray*, 80 *Ib.* 683.

⁵ *Patterson v. Hayden* (Ore.), 11 Am. St. Rep. 827.

⁶ 21 A. & E. Ency. Law, 1023; *Patterson v. Hayden*, *supra*.

⁷ *State v. Patterson*, *supra*, and authorities therein cited.

Special attention is called to an exhaustive note found in 87 Am. Dec. 405, and to the following notes, found in 44 Am. Dec. 166; 8 Am. St. Rep. 870; 25 Am. St. Rep. 742; 42 *Id.* 503; 48 *Id.* 546, and a well considered note by Professor Lile, 2 Va. Law Reg. 678, and another note by same, in 3 Va. Law Reg. 160.